IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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| K.M. SKELLY, INC. | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | Case No. |
| | ) | |
| SEASIDE PARTNERS, LLC, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

## NOTICE OF REMOVAL

NOW COMES Defendant Seaside Partners, LLC ("Seaside" or "Defendant"), by and through its undersigned attorneys, and hereby gives notice of removal pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 of the action styled *K.M. Skelly v. Seaside Partners, LLC*, Civil Action No. D-101-CV-2017-02182, filed by Plaintiff K.M. Skelly, Inc. ("Plaintiff") in the New Mexico First Judicial District Court, Santa Fe County, New Mexico (the "State Lawsuit").   Seaside respectfully states the following as grounds for removal of this action:

### Procedural History and Timeliness of Removal

1.      On or about August 3, 2017, Plaintiff filed the Amended Complaint to Foreclose Lien and for Breach of Contract and a Summons for this Amended Complaint was issued. Copies of the Amended Complaint and related Summons are attached as **Exhibit A**.

2.      Upon information and belief, Plaintiff filed a Complaint on August 2, 2017, but a Summons was not issued and Plaintiff did not serve this Complaint on Seaside.

3.      Service of the Summons and Amended Complaint was made upon Seaside on or about August 12, 2017.

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4.      28 U.S.C. § 1446(b)(2)(B) provides that for cases removed on the grounds of diversity jurisdiction, "Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal."

5.      Seaside's Notice of Removal is therefore timely under 28 U.S.C. §1446(b).  This Notice of Removal is filed within thirty (30) days of service of the Amended Complaint and Summons, and the date by which Seaside is required to answer or otherwise respond to Plaintiff's Amended Complaint has not yet expired.

6.      **Exhibit A** to this Notice of Removal contains copies of all process received by Seaside in the State Lawsuit.

### This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. 1332(a)

7.      Under 28 U.S.C. § 1332(a), this Court has original subject-matter jurisdiction over a civil action if there is complete diversity of citizenship and the amount in controversy exceeds $75,000, exclusive of interest and costs.  As set forth below, all requirements of 28 U.S.C. § 1332 and 1441 are satisfied in this case.

8.      The Parties are completely diverse.

9.      Plaintiff alleged in the Amended Complaint that Seaside is a North Carolina limited liability company with its primary place of business in Palm Beach, Florida. (Amended Comp. ¶ 2.)  Plaintiff further alleged that Seaside is a single member limited liability company, whose only member is Roxanne Quimby, who lists her address in Palm Beach, Florida.  (Id.)

10.     Plaintiff also alleged in the Amended Complaint that it is a New Mexico corporation with its principal place of business in Santa Fe, New Mexico.  (Comp. ¶ 1.)

11.     Accordingly, there is complete diversity of citizenship as Plaintiff is a citizen of New Mexico and Seaside is a citizen of Florida.

12.     Without conceding that Plaintiff is entitled to any damages whatsoever from Seaside, the purported amount in controversy in the action exceeds $75,000.

13.     Plaintiff alleged that Seaside violated a Construction Contract by failing to compensate Plaintiff for work performed, which Seaside denies.

14.     Plaintiff seeks compensatory damages, punitive damages, prejudgment interest, costs, and attorneys' fees in this action. Plaintiff claims in its Amended Complaint that it is owed $279,990.32 under the contract with Seaside. (Amended Comp. ¶ 20.)

15.     Under 28 U.S.C. § 1332(a), this Court has original subject-matter jurisdiction over a civil action if there is complete diversity of citizenship and the amount in controversy exceeds $75,000.  As set forth below, all requirements of 28 U.S.C. § 1332 and 1441 are satisfied in this case.

16.     This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a), because the matter in controversy exceeds the sum of $75,000.00 and is between citizens of different states.

**Removal to this District is Proper**

17.     Based upon the foregoing, Seaside desires and is entitled to have the State Lawsuit removed from the New Mexico First Judicial District Court, Santa Fe County to the United States District Court for New Mexico, Northern Division.

18.     Seaside respectfully requests that this Court accept this Notice of Removal, assume jurisdiction over the action, and issue such orders and process as may be necessary going forward.

19.     Pursuant to 28 U.S.C. § 1446(d), Seaside's written notice of the filing of this Notice of Removal will be served upon counsel for all parties, and a Notice to State Court of Filing Notice of Removal will be filed simultaneously with the Clerk of the First Judicial District Court of the County of Santa Fe.  *See* Notice to State Court of Filing Notice of Removal (without Exhibits) attached as **Exhibit B**.

20.     WHEREFORE, Defendant Seaside Partners, LLC, prays that the above-captioned action, now pending in the New Mexico First Judicial District Court, Santa Fe County be removed to the United States District Court for New Mexico, Northern Division.

Respectfully submitted, this the 8th day of September, 2017.

SOMMER KARNES & ASSOCIATES, LLP

/s/  Karl H. Sommer
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*Counsel for Defendant*

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## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Notice of Removal was, on the date set forth below, filed electronically, using this Court's CM/ECF system and, further, that a hard copy of the foregoing Notice of Removal was served upon the Plaintiff in this action, via United States Mail, first class, postage-prepaid, addressed as follows:

> Mark L. Ish, Esq.
> William D. Winter, Esq.
> Bryan M. Rowland, Esq.
> Felker, Ish, Ritchie & Geer, P.A.
> 911 Old Pecos Trail
> Santa Fe, NM 87505
>
> *Counsel for Plaintiff*

This, the 8th day of September, 2017.

/s/  Karl H. Sommer